

**REGISTER OF
ENTERPRISE AGREEMENTS**

ENTERPRISE AGREEMENT NO: EA03/156

TITLE: Buckland Convalescent Hospital Employees Enterprise Agreement 2003

I.R.C. NO: IRC3/3301

DATE APPROVED/COMMENCEMENT: Approved 9 July 2003 and commenced 1 July 2003

TERM: 12

**NEW AGREEMENT OR
VARIATION:** New

GAZETTAL REFERENCE: 10 October 2003

DATE TERMINATED:

NUMBER OF PAGES: 11

COVERAGE/DESCRIPTION OF

EMPLOYEES: Applies to all staff employed by Buckland Convalescent Hospital, who fall within the coverage of the Aged Care General Services (State) Award and the Charitable, Aged and Disability Care Services (State) Award

PARTIES: The Buckland Convalescent Hospital -&- The Health and Research Employees' Association of New South Wales

BUCKLAND CONVALESCENT HOSPITAL EMPLOYEES ' ENTERPRISE AGREEMENT 2003

Arrangement

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1. Title and Jurisdiction

This Enterprise Agreement will be known as and referred to as the "Buckland Convalescent Hospital Employees Enterprise Agreement-2003".

2. Parties

This Enterprise Agreement will be binding on -

- 2.1 Buckland Convalescent Hospital (A.C.N. 000 243 863, ABN 82 517 110 268) of 39 Hawkesbury Road, Springwood, New South Wales 2777 ("The Employer");
- 2.2 Health & Research Employees Association of Level 4, 370 Pitt St SYDNEY New South Wales 2000 ("The Association"); and
- 2.3 All staff employed by Buckland Convalescent Hospital, within the classifications of work contained in the Aged Care General Services (State) Award and the Charitable Sector, Aged and Disability Care Services (State) Award ("The Employee(s)")

3. Duration

- 10.1 This Enterprise Agreement will take effect on 1 July 2003 and shall remain in force for a nominal term of 12 months.
- 10.2 Negotiations on terms and conditions of employment within this Enterprise Agreement will commence no earlier than 3 months before the termination date of this Enterprise Agreement.

4. Date and Period of Operation

The parties to the Enterprise Agreement have agreed to implement the Remuneration Packaging Arrangements by administrative action, from 1 July 2003.

5. Definitions

ATO - Australian Taxation Office.

ATO Guidelines - refer to documents published by the ATO dealing with interpretation and operation of taxation legislation.

Award - refers to the parent awards known as the Private Hospital Employees (State) Award, and the Private Hospital Professional Employees (State) Award which govern the minimum employment entitlements of the Employee(s).

Employer - means the Buckland Convalescent Hospital.

HREA - means the Health & Research Employees Association.

Fringe Benefits - means any non-cash benefits provided to an Employee from the Employee's Total Remuneration Entitlement, up to the value of salary sacrifice limit.

Fringe Benefits Tax - means the tax payable by an employer on the value of certain fringe benefits that have been provided to Employees, or to associates of Employees.

Ordinary time earnings - means remuneration for an employee's weekly number of hours worked, excluding overtime hours, calculated at the ordinary-time rate of pay including the following:

1. Payment of ordinary hours of work.
2. Shift premiums for ordinary hours worked.
3. Ordinary time award allowances, not including expense related allowances.
4. Over-award payments for ordinary hours worked.

Base Ordinary Hourly Rate - means total remuneration less employee fringe benefits less statutory superannuation payment made by the employer.

PBI - means "Public Benevolent Institution", as defined by the *Fringe Benefits Tax Assessment Act 1986*.

Salary - refers to the actual cash salary, which is subject to PAYE taxation.

Salary Sacrificing - means the allocation of an amount, up to the salary sacrifice limit, from the Employee's Total Remuneration Entitlement into a notional benefit account for the Employee, from which fringe benefits and statutory superannuation benefits are provided.

Salary Sacrifice Limit - means \$30,000 gross and \$15,450 net at the date of this agreement, or any other amount allowed by the ATO to be exempted from the payment of Fringe Benefits Tax.

Total Remuneration Entitlement - means the combined value of:

Employee's salary.
Employee's fringe benefits

Statutory superannuation made by the employer

6. Aim of This Enterprise Agreement

The aim of the Enterprise Agreement is to build a culture of partnership between Buckland Convalescent Hospital, its staff and the Health & Research Employees Association, as well as maintain and enhance the health services provided by Buckland Convalescent Hospital. The Fringe Benefit Tax exemption afforded to Buckland Convalescent Hospital under the Fringe Benefits Tax Assessment Act as a PBI, provides an opportunity to allocate more resources to direct service delivery, by achieving a reduction in net employment costs through salary sacrificing. Essentially this Enterprise Agreement is designed to:

- recognise the contribution and value of staff on an equitable, collaborative and consistent basis;
- focus the work of staff towards the Buckland Convalescent Hospital mission, corporate objectives and strategic plan;
- attract, retain and motivate staff;
- provide flexible remuneration arrangements for staff,
- provide the benefits and obligations suited to staff.

7. Relationship Between Enterprise Agreement and Award

The provisions of the Private Hospital Employees (State) Award and the Private Hospital Professional Employees (State) Award will continue to apply during the term of this Enterprise Agreement, except to the extent that they are excluded or modified by the Enterprise Agreement under Clause 13 or otherwise. Where there is any inconsistency this Agreement shall apply and furthermore, where this Agreement is silent, the Award shall apply.

8. Nomination By Employee

The parties acknowledge that the Employees will direct Buckland Convalescent Hospital in relation to:

(a) Payment Of Salary

The employee's "Total Remuneration " Entitlement is as set out in the Award. The employee may elect to receive part of that Entitlement as Fringe Benefits.

(b) Provision of Fringe Benefits

The parties acknowledge that the fringe benefits cannot exceed in value \$30,000 gross and \$15,450.00 net of the Employee's Total Remuneration Entitlement.

(c) The employee may have the opportunity to amend the amount of their nominated fringe benefits, provided that said amount does not exceed \$30,000 gross and \$15,450.00 net of the employees Total Remuneration Entitlement.

9. Payment of Salary

Buckland Convalescent Hospital agrees to pay the Employee his or her salary (less taxation) via electronic funds transfer on a fortnightly basis in arrears.

10. Provision of Fringe Benefits

Buckland Convalescent Hospital agrees to provide fringe benefits on a monthly basis in arrears, as agreed between the parties in accordance with clause 8.

11. Taxation Implications

The parties to this agreement acknowledge that the Employee's remuneration entitlement has been calculated on the basis that:

- 11.1 Buckland Convalescent Hospital is not liable to pay Fringe Benefits Tax;
- 11.2 The ATO allows remuneration packaging as a legitimate tax planning measure.
- 11.3 The ATO has issued a draft policy taxation ruling which provides for a maximum amount which can be salary sacrificed without incurring Fringe Benefits Tax - at the date of this agreement, this salary sacrifice was \$30,000 gross and \$15,450 net per annum."
- 11.4 In the event that:
 - (a) any legislation is introduced into Federal Parliament with the intent of removing PBI status of Buckland Convalescent Hospital.
 - (b) a tax liability arises, or is expected to arise, in relation to the salary sacrifice component of the Employee's remuneration, whether by reason of fringe benefits tax, (however described), assessment of income in the hand of the Employee, or otherwise or,
 - (c) government funding is reduced by an amount directly referable to salary sacrificing or;
 - (d) ATO draft or final rulings, or guidelines, relating to salary sacrificing effect the ability of Buckland Convalescent Hospital to enter salary-sacrificing arrangements with Employees that is financially advantageous for Buckland Convalescent Hospital.
- 11.5 The following agreements will apply:
 - (i) Buckland Convalescent Hospital will notify the Employee in writing of the occurrence of an event referred to in 11.4(a) (b) (c) or (d) above;
 - (ii) Buckland Convalescent Hospital will enter negotiations with the HREA for a variation to the Enterprise Agreement; and
 - (iii) Should the parties fail to reach agreement within three (3) months of the Employee receiving written notification referred to above;
 - (a) After the expiry of the 3month period, Buckland Convalescent Hospital will pay the Employee the appropriate Award rate of pay at the Employee's classification.

The minimum level of superannuation at the relevant minimum award rate of pay into the employees nominated Superannuation Fund.
 - (b) Buckland Convalescent Hospital will continue to pay the minimum statutory superannuation contribution for the appropriate Award rate on behalf of the Employee into the employees Superannuation Fund.

- (iv) At the end of the 3 month period specified in sub-paragraph (III) the Employer will not be liable to pay the salary or provide the fringe benefits (or any superannuation contributions in excess of the minimum required under relevant legislation) otherwise provided in this Agreement.

12. Undertaking With Respect to Award Increases

- 12.1 The parties to this Enterprise Agreement agree that all wage increases to the Aged Care General Services (State) Award and the Charitable Sector, Aged and Disability Care Services (State) Award during the term of this agreement will apply.
- 12.2 Any allowance, penalty rate, overtime, payment for unused leave entitlements, other than any payments for leave taken whilst employed, shall be calculated by reference to the salary which would have applied to the employee in the absence of any salary sacrifice to superannuation. That is to say that these entitlements will accrue at the rate of the total remuneration package. Payment for leave taken whilst employed will be at the post salary sacrificed amount.
- 12.3 Superannuation -An amount equivalent to the minimum statutory superannuation contribution on the total remuneration package, will be made by the Employer.

13. Award Clauses to Be Overridden By This Enterprise Agreement.

All clauses of the Award will continue to apply except for the following., in order to allow for remuneration packaging.

Part B: Table 1 Monetary Rates and

Part B Table 2 Other Rates and Allowances

14. Anti Discrimination

The parties to this Enterprise Agreement. agree that:

- (a) it is their intention of the parties bound by this Enterprise Agreement to achieve the principle objects in paragraph 3 (j) of the *Industrial Relations Act* 1996, which is to respect and value the diversity of the workforce by helping to prevent and eliminate discrimination at Buckland Convalescent Hospital on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin; and
- (b) Under the *Anti-Discrimination Act* 1977, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- (c) any dispute concerning these provisions and their operation will be progressed initially under the Dispute "Resolution procedure in the Enterprise Agreement; and
- (d) nothing in these provisions allows any treatment that would otherwise be prohibited by anti-discrimination provisions applicable in Commonwealth, State or Territory legislation; and
- (e) nothing in these provisions prohibits:
 - (i) any conduct or act which is specifically exempted from anti-discrimination legislation:
 - (ii) the payment of junior rates of pay to persons under 21 years of age; or
 - (iii) any act or practice of a body established to propagate religion which is exempted under section56(d) of the *Anti-Discrimination Act* 1977;

- (iv) a party to the award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction
- (f) This clause does not create legal rights or obligations in addition to those imposed upon the parties by legislation referred to in this clause.

NOTES-

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:
"Nothing in this Act affects any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion".

15. Dispute Resolution Procedure

In relation to any matter that may be in dispute between the parties to this Enterprise Agreement. ("the matter"), the parties:

- (a) will attempt to resolve the matter at the workplace level, and place emphasis on negotiating a settlement of any issue at the earliest possible stage in the process including, but not limited to:
 - (i) the Employee and his or her immediate Manager meeting and conferring on the matter; and
 - (ii) if the matter is not resolved at such a meeting, it will be referred to the Human Resource Manager, or his/her nominee, to arrange further discussions involving more senior levels of management (as appropriate); and
- (b) acknowledge the right of either party to appoint, in writing, another person to act on behalf of the party in relation to resolving the matter at the workplace level; and
- (c) agree to allow either party to refer the matter to mediation if the matter cannot be resolved at the workplace level; with the cost of the mediation to be borne by the employer, and
- (d) agree that if either party refers the matter to mediation, both parties will participate in the mediation process in good faith; and
- (e) acknowledge the right of either party to appoint in writing another person to act on behalf of the party in relation to the mediation and/or arbitration process; and
- (f) if seven days has expired from referral of the matter to mediation in accordance with subparagraph (c) of this clause, and one party is of the opinion that the matter cannot be resolved at mediation, then that party can refer the matter to the New South Wales Industrial Relations Commission, and
- (g) agree that during the time when the parties attempt to resolve the matter:
 - (i) the parties continue to work in accordance with their contract of employment, the Award and the Enterprise Agreement., unless the Employee has a reasonable concern about an imminent risk to his or her health or safety; and
 - (ii) subject to relevant provisions of any State or Territory occupational health and safety law, even if the Employee has a reasonable concern about an imminent risk to his or her health or safety, the Employee must not unreasonably fail to comply with a direction by his or her employer to perform other available work, whether at the same workplace or another workplace, that is safe and appropriate for the Employee to perform; and

- (iii) the parties must cooperate to ensure that the Dispute Resolution procedures are carried out as quickly as is reasonably possible.
- (h) At any stage of the procedure, the employee(s) may be represented by an Officer of Health & Research Employees Association and/or HREA workplace representative.

10. Declarations and Signatories

The Enterprise Agreement has been negotiated through extensive consultation between Buckland Convalescent Hospital, Health & Research Employees Association and the Employee(s). The content of the Enterprise Agreement. has been canvassed with all parties. The parties are consentingly entering into this Enterprise Agreement., with full knowledge as to the content and effect of this document.

The parties declare this Enterprise Agreement

- (a) was at no stage entered into under duress and
- (b) reflects the interest and desires of the parties.

SIGNED for and on behalf of Buckland Convalescent Hospital (ACN 000 243 863, ABN 82 517 110 268) by

(Insert name & Position)

In the presence of

Witness

Date:

Signed for and on behalf of Health & Research Employees Association by

Michael Williamson
State Secretary
Health & Research Employees Association

In the presence of

Witness

Date:

